

**SECOND REVIEW OF THE OPERATION AND IMPLEMENTATION
OF THE SPS AGREEMENT**

Review of the Implementation of Transparency Provisions

Communication from Australia, New Zealand and the United States

The following communication, received on 6 June 2006, is being circulated at the request of the Delegations of Australia, New Zealand and the United States.

1. Because sanitary and phytosanitary measures have the potential to restrict trade unnecessarily, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures establishes clear rules regarding the use of SPS measures. Transparency is one of the fundamental principles, as it aims to achieve a greater degree of clarity, predictability and information about trade policies, rules, and regulations of Members. The Agreement sets clear, detailed rights and obligations for food safety and animal and plant health measures which affect trade. We believe that the transparency provisions of the SPS Agreement are vital to ensure that measures taken to protect human, animal or plant life or health are made known to the interested public and other trading partners, comply with the provisions of the WTO SPS Agreement and avoid potential trade concerns among the Members.

2. Australia, New Zealand and the United States recommend that the principal tasks for the SPS Committee with regard to implementation of the transparency provisions for the Committee should focus on strengthening developing country Members' enquiry points, addressing the issues that have been raised by specific Members that are detailed below, and reviewing the Secretariat's handbook on transparency entitled "How to Apply the Transparency Provisions of the SPS Agreement" to better assess what progress Members have made in meeting their transparency obligations.

3. This paper seeks to summarize issues raised so far by Members in the SPS Committee on the issue of transparency to generate discussion on how to ensure the full implementation of the transparency provisions of the Agreement.

ENQUIRY POINTS

4. Many Members have acknowledged that more work should be done by all Members to address the transparency provisions of the Agreement. For example, according to G/SPS/GEN/27/Rev.15, 130 WTO Members had identified a national notification authority as of May 2005, and 136 had established a SPS enquiry point. In document G/SPS/R/37, the Secretariat reported that 18 Members still had not met these basic obligations. How can the Committee best assist these Members, given our limited resources, in meeting their basic obligations under the Agreement?

5. Furthermore, how can the Committee assist Members to better ensure that the enquiry points identified are operational and working to further the full implementation of the Agreement? Should the Committee discuss the possibility of setting a specific goal to work with these countries to create an enquiry point contact in each Member country and review effective operational practices as goals for this review?

MEMBER SPECIFIC ISSUES

6. The Committee's review of the implementation of the transparency provisions could also discuss specific issues raised by various Members at previous Committee meetings and the 31 March 2006 Workshop on the Implementation of the SPS Agreement. These include:

- Identifying good practices of numerous enquiry points in operation;
- Increasing the use of informal translations;
- Reviewing the number of languages used for notifications, keeping in mind the Committee's resource limitations;
- Discussing the time periods provided to receive and consider comments from Members, keeping in mind national legislative mandates;
- Reviewing whether the Committee should mandate that final rules are to be notified to the Secretariat as an addendum to the original notified measure;
- Discussing if new measures that simply conform to international standards be notified;
- Studying how countries can most effectively utilize the notifications provided; and
- Forecasting how the creation of the Secretariat's SPS Database will address these issues.

HANDBOOK ON TRANSPARENCY

7. The Secretariat's Handbook on Transparency should be used as a benchmark to allow individual Members to share their experiences, and to ensure that notifications submitted comply with the guidelines previously agreed upon by the Committee.

8. For example, can each Member say that:

- Respective Notification Authorities have access to or have relationships with the technical experts in the sanitary and phytosanitary areas who will be writing regulations (potentially future SPS measures)?
- Designated enquiry points are obtaining the answers from the relevant national bodies and replying to the country making the request for information as quickly as possible?
- Measures that "significantly affect trade" are being notified to the Secretariat while in draft stage and without delay?
- Notifications summarize the SPS regulation clearly, indicating its health protection objective?

- Enquiry points provide copies of the proposed regulations upon request to other Members once a SPS measure has been notified? Does the Notification Authority have the document in hand before making a notification? Are they responding to all requests for documents within five working days?
- SPS agencies are acknowledging the receipts of comments from other WTO Members and explaining how these comments are taken into account? Are they providing any Member from which it has received comments with a copy of the corresponding SPS regulation as adopted?
- Agencies are granting requests for extension of the comment period wherever practicable especially with regards to products of particular interest to developing country Members? Is a 30-day extension period normally provided?
- Enquiry point or agencies are charging the same cost for the documents as they would for their own nationals plus the cost of delivering the documents?
- Developed country Members are supplying translations of the document or a summary in English, French or Spanish when otherwise not available?
- Measures that have the potential to restrict trade, generally, do not enter into force in a period shorter than six months?

OTHER POTENTIAL PRIORITY AREAS

9. In the Decision on Transparency of Special and Differential Treatment (G/SPS/33), the Committee agreed to notify special and differential treatment measures. The Committee's goal is to review what progress, if any, has been made by Members to address these concerns through enhanced transparency by early 2008. At that time, we will need to evaluate whether these practices become part of the Committee's permanent practice. In anticipation of this review, the Committee may also want to discuss whether there are other activities such as regionalization determinations, as individual Members have suggested, that should be notified.

10. A full review of the transparency provisions of the Agreement will also protect a Member's right to enact measures that protect human, animal or plant life or health and at the same time, address other important concerns before this Committee such as undue delays and the need for timelines for administrative decision-making processes. A thorough review of Members' transparency obligations under the Agreement and a full discussion about our respective implementation of these obligations may shed some light on Members' respective science-based processes and administrative procedures. A better understanding of each other's programs and legal requirements will allow the Committee to more effectively evaluate the need to consider additional work on undue delays and timelines as part of the Review of the Agreement.

11. We strongly urge the Committee to begin work with a detailed study of the implementation of Article 7 and Annex B of the Agreement.
